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FREETECH, INC.

12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**

16 ECHOSTAR SATELLITE L.L.C.,
ECHOSTAR TECHNOLOGIES
17 CORPORATION, and NAGRASTAR L.L.C.,

18 Plaintiffs,

19 vs.

20 FREETECH, INC. and DOES 1-10,

21 Defendants.

22 FREETECH, INC.,

23 Counterclaimant,

24 vs.

25 ECHOSTAR SATELLITE L.L.C.,
ECHOSTAR TECHNOLOGIES
26 CORPORATION, and NAGRASTAR L.L.C.,

27 Counter-defendants.
28

Case No. 07-6124 (JW)

**DEFENDANT FREETECH, INC.'S
AMENDED ANSWER AND
COUNTERCLAIMS**

DEMAND FOR JURY TRIAL

Freotech, Inc. ("Freotech") responds to the Plaintiffs' Complaint as follows:

1. Freotech denies the allegations of paragraph 1 of the Complaint.
2. Freotech lacks enough information to admit or deny the allegations of paragraph 2 of the Complaint and therefore denies the allegations.
3. Freotech lacks enough information to admit or deny the allegations of paragraph 3 of the Complaint and therefore denies the allegations.
4. Freotech lacks enough information to admit or deny the allegations of paragraph 4 of the Complaint and therefore denies the allegations.
5. Freotech lacks enough information to admit or deny the allegations of paragraph 5 of the Complaint and therefore denies the allegations.
6. Freotech lacks enough information to admit or deny the allegations of paragraph 6 of the Complaint and therefore denies the allegations.
7. Freotech denies the allegations of paragraph 7 of the Complaint.
8. Freotech lacks enough information to admit or deny the allegations of paragraph 8 of the Complaint and therefore denies the allegations.
9. Freotech lacks enough information to admit or deny the allegations of paragraph 9 of the Complaint and therefore denies the allegations.
10. Freotech lacks enough information to admit or deny the allegations of paragraph 10 of the Complaint and therefore denies the allegations.
11. Freotech admits that it is a California corporation and that its registered agent for service of process is Heejoun Jin. Freotech denies the remaining allegations of paragraph 11 of the Complaint.
12. Freotech denies the allegations of paragraph 12 of the Complaint to the extent they require a response.
13. Freotech denies the allegations of paragraph 13 of the Complaint.
14. Freotech admits that the Court has jurisdiction over this action. Freotech denies the remaining allegations of paragraph 14 of the Complaint.

1 15. Freotech admits that the Court has personal jurisdiction over Freotech. Freotech
2 denies the remaining allegations of paragraph 15 of the Complaint.

3 16. Freotech lacks enough information to admit or deny the allegations of paragraph 16 of
4 the Complaint and therefore denies the allegations.

5 17. Freotech lacks enough information to admit or deny the allegations of paragraph 17 of
6 the Complaint and therefore denies the allegations.

7 18. Freotech lacks enough information to admit or deny the allegations of paragraph 18 of
8 the Complaint and therefore denies the allegations.

9 19. Freotech lacks enough information to admit or deny the allegations of paragraph 19 of
10 the Complaint and therefore denies the allegations.

11 20. Freotech lacks enough information to admit or deny the allegations of paragraph 20 of
12 the Complaint and therefore denies the allegations.

13 21. Freotech lacks enough information to admit or deny the allegations of paragraph 21 of
14 the Complaint and therefore denies the allegations.

15 22. Freotech lacks enough information to admit or deny the allegations of paragraph 22 of
16 the Complaint and therefore denies the allegations.

17 23. Freotech lacks enough information to admit or deny the allegations of paragraph 23 of
18 the Complaint and therefore denies the allegations.

19 24. Freotech lacks enough information to admit or deny the allegations of paragraph 24 of
20 the Complaint and therefore denies the allegations.

21 25. Freotech lacks enough information to admit or deny the allegations of paragraph 25 of
22 the Complaint and therefore denies the allegations.

23 26. Freotech lacks enough information to admit or deny the allegations of paragraph 26 of
24 the Complaint and therefore denies the allegations.

25 27. Freotech admits that FTA Receivers are devices that can receive "free-to-air" satellite
26 television signals, which are either not scrambled or scrambled but available free of charge.
27 Freotech further admits that "free-to-air" television channels include ethnic, religious, business,
28 music, information, and advertising content. Freotech lacks enough information to admit or deny the

1 allegations in first two sentences of paragraph 27 of the Complaint and therefore denies the
2 allegations. Freetech denies the remaining allegations of paragraph 27 of the Complaint.

3 28. Freetech lacks enough information to admit or deny the allegations of paragraph 28 of
4 the Complaint and therefore denies the allegations.

5 29. Freetech lacks enough information to admit or deny the allegations of paragraph 29 of
6 the Complaint and therefore denies the allegations.

7 30. Freetech lacks enough information to admit or deny the allegations of paragraph 30 of
8 the Complaint and therefore denies the allegations.

9 31. Freetech lacks enough information to admit or deny the allegations of paragraph 31 of
10 the Complaint and therefore denies the allegations.

11 32. Freetech lacks enough information to admit or deny the allegations of paragraph 32 of
12 the Complaint and therefore denies the allegations.

13 33. Freetech lacks enough information to admit or deny the allegations of paragraph 33 of
14 the Complaint and therefore denies the allegations.

15 34. Freetech lacks enough information to admit or deny the allegations of paragraph 34 of
16 the Complaint and therefore denies the allegations.

17 35. Freetech lacks enough information to admit or deny the allegations of paragraph 35 of
18 the Complaint and therefore denies the allegations.

19 36. Freetech admits that it distributes and promotes the sale of "Coolsat" branded free-to-
20 air receivers in the United States. Freetech denies the remaining allegations of paragraph 36 of the
21 Complaint.

22 37. Freetech denies the allegations of paragraph 37 of the Complaint.

23 38. Freetech admits that it imports FTA receivers from a manufacturer in Asia. Freetech
24 lacks enough information to admit or deny the remaining allegations of paragraph 38 of the
25 Complaint and therefore denies the allegations.

26 39. Freetech lacks enough information to admit or deny the allegations of paragraph 39 of
27 the Complaint and therefore denies the allegations.

28

40. Freetech denies the allegations of the first sentence of paragraph 40 of the Complaint. Freetech lacks enough information to admit or deny the remaining allegations of paragraph 40 and therefore denies the allegations.

41. Freetech denies the allegations of the final sentence of paragraph 41 of the Complaint. Freetech lacks enough information to admit or deny the remaining allegations of paragraph 41 and therefore denies the allegations.

42. Freetech denies the allegations of paragraph 42 of the Complaint.

43. Freetech denies the allegations of paragraph 43 of the Complaint.

44. Freetech denies the allegations of paragraph 44 of the Complaint.

COUNT I

45. Freetech here incorporates by reference paragraphs 1 through 44 above.

46. Freetech denies the allegations of paragraph 46 of the Complaint.

47. Freetech denies the allegations of paragraph 47 of the Complaint.

48. Freetech denies the allegations of paragraph 48 of the Complaint.

49. Freetech denies the allegations of paragraph 49 of the Complaint.

50. Freetech denies the allegations of paragraph 50 of the Complaint.

51. Freetech denies the allegations of paragraph 51 of the Complaint.

COUNT II

52. Freetech here incorporates by reference paragraphs 1 through 51 above.

53. Freetech denies the allegations of paragraph 53 of the Complaint.

54. Freetech denies the allegations of paragraph 54 of the Complaint.

55. Freetech denies the allegations of paragraph 55 of the Complaint.

56. Freetech denies the allegations of paragraph 56 of the Complaint.

COUNT III

57. Freetech here incorporates by reference paragraphs 1 through 56 above.

58. Freetech denies the allegations of paragraph 58 of the Complaint.

59. Freetech denies the allegations of paragraph 59 of the Complaint.

60. Freetech denies the allegations of paragraph 60 of the Complaint.

61. Freetech denies the allegations of paragraph 61 of the Complaint.

COUNT IV

62. Freetech here incorporates by reference paragraphs 1 through 61 above.

63. Freetech denies the allegations of paragraph 63 of the Complaint.

64. Freetech denies the allegations of paragraph 64 of the Complaint.

65. Freetech denies the allegations of paragraph 65 of the Complaint.

66. Freetech denies the allegations of paragraph 66 of the Complaint.

COUNT V

67. Freetech here incorporates by reference paragraphs 1 through 66 above.

68. Freetech denies the allegations of paragraph 68 of the Complaint.

69. Freetech denies the allegations of paragraph 69 of the Complaint.

70. Freetech denies the allegations of paragraph 70 of the Complaint.

71. Freetech denies the allegations of paragraph 71 of the Complaint.

72. Freetech denies the allegations of paragraph 72 of the Complaint.

COUNT VI

73. Freetech here incorporates by reference paragraphs 1 through 72 above.

74. Freetech denies the allegations of paragraph 74 of the Complaint.

75. Freetech denies the allegations of paragraph 75 of the Complaint.

76. Freetech denies the allegations of paragraph 76 of the Complaint.

77. Freetech denies the allegations of paragraph 77 of the Complaint.

DEFENSES

Freetech asserts the following defenses, without regard to whether they are "affirmative" defenses or matters as to which the plaintiffs have the burden of proof.

1. Plaintiffs' Complaint, and each cause of action within it, fails to state a cause of action.

2. Process has been defective.

3. Service of process has been insufficient.

4. Plaintiffs' claims are barred by their failure to join indispensable parties.

5. Plaintiffs' claims for statutory damages are barred or limited by the U.S. Constitution.
6. Plaintiffs' claims are barred because Plaintiffs lack standing.
7. Plaintiffs' remedies are limited by 17 U.S.C. § 1203(c)(5).
8. Plaintiffs' state law claims are preempted.
9. Plaintiffs' claims are barred by relevant statutes of limitations.
10. Plaintiffs' claims are barred by laches.
11. Plaintiffs' claims are barred by consent, waiver, acquiescence, and license.
12. Plaintiffs' claims are barred by the doctrine of unclean hands.
13. Plaintiffs' claims are barred by their failure to mitigate damages.

COUNTERCLAIMS

1. Freetech brings these Counterclaims against Plaintiffs and Counter-defendants Echostar Satellite L.L.C., Echostar Technologies Corporation, and Nagrastar L.L.C. "Echostar" shall refer to either Echostar Satellite L.L.C. or Echostar Technologies Corporation, or both. The Court has jurisdiction over these Counterclaims pursuant to 28 U.S.C. § 1331, 1338, 1367, and 2201.

2. Freetech imports and distributes digital satellite receivers within the United States under its Coolsat brand. Coolsat receivers are so-called Free To Air ("FTA") satellite receivers.

3. Presently, Freetech imports and distributes the Coolsat 6100 Private, 7100 miCro-PVR, and 8100 HD miCro-PVR. The 6100 receives and displays standard-definition satellite transmissions of television programming. The 7100 also receives and displays standard-definition transmissions, but also includes a digital Personal Video Recorder ("PVR") that allows recording of broadcast material. The 8100 receives and displays high-definition ("HD") satellite transmissions of television programming and includes the PVR.

4. Coolsat receivers are primarily designed to receive satellite transmissions. Coolsat receivers are primarily designed to receive FTA satellite transmissions.

5. Satellite receivers capable of receiving satellite transmissions, including FTA transmissions, have been available to consumers for decades.

6. In fact, Echostar Europe has sold "millions of receivers for . . . Free to Air markets." Echostar Europe states on its website: "DIGITAL TELEVISION DESIGN: Powering the free-to-air

1 revolution.” Freetech is informed and believes, and therefore alleges, that Echostar Europe is a
2 subsidiary or corporate affiliate of Echostar. Freetech is informed and believes, and therefore
3 alleges, that Echostar Europe’s satellite receivers and Coolsat receivers perform substantially the
4 same functions. Attached as Exhibit A are true and correct copies of printouts of web pages from
5 Echostar Europe’s website.

6 7. FTA satellite transmissions are freely available to anyone with a FTA satellite
7 receiver such as Freetech’s Coolsat receivers.

8 8. FTA broadcasters do not charge fees to viewers. FTA satellite transmissions are not
9 scrambled or encrypted. FTA broadcasters want the public to receive their signals.

10 9. Just as terrestrial broadcast television has been profitable for some terrestrial
11 broadcasters, so FTA satellite broadcasting has been profitable for some FTA satellite broadcasters.

12 10. FTA programming may be financially supported by advertising or by voluntary
13 contributions from viewers or supporters. In some cases, governments or private organizations fund
14 FTA programming.

15 11. FTA satellite transmissions offer viewers a rich variety of television programming.

16 12. FTA satellite programming originates from governments; public broadcasters; private
17 broadcasters, television stations, or networks; and program producers.

18 13. There are hundreds of FTA channels available to the North America viewing
19 audience, including such channels as PBS, Al Jazeera English, NASA TV, China Central Television
20 9, and PressTV. Attached as Exhibit B are printouts from websites of these broadcasters advertising
21 their FTA satellite programming.

22 14. FTA satellite programming not only includes English language content, but also
23 includes programming in foreign languages and programming produced in foreign countries. FTA
24 satellite programming offers educational enrichment, news gathering, and cultural experiences that
25 are simply unavailable on terrestrial broadcasts.

26 15. FTA satellite programming is available in countries throughout the world. In 2004,
27 sales of satellite receivers for FTA were expected to outpace, for a second year in a row, sales of
28 satellite receivers tied to subscription service providers, 36 million to 29 million. Data from mid-

2007 shows that some 30 to 40 million people in Europe alone are getting their television from FTA satellite transmissions.

16. Satellite transmissions of television programming can also originate from service providers such as DirecTV or Dish Network, operated by Echostar. Unlike FTA programming, these pay-TV service providers charge a subscription fee to viewers. As these providers' programming is often encrypted or scrambled, the providers give subscribers equipment capable of decrypting or descrambling their transmissions.

17. Echostar's Dish Network offers international programming. However, Echostar charges for this programming, sometimes charging additional monthly fees to access individual channels or sets of channels. FTA foreign language programming comes with no subscription cost.

18. For example, China Central Television 9 ("CCTV-9") makes its satellite broadcasts freely available to those with an FTA satellite receiver. A Coolsat receiver user could watch CCTV-9 satellite broadcasts for free. Echostar requires its Dish Network users to pay for access to CCTV-9. Attached hereto as Exhibit C is a printout of a web page on Dish Network's website showing that it would cost users \$29.99 per month or \$329.89 a year to receive the "Great Wall TV Package" that includes CCTV-9. Thus, Dish Network offers to sell subscriptions to satellite broadcasts that are made freely available to the public.

19. Freetech is informed and believes, and therefore alleges, that Plaintiffs and Counter-defendants want to stifle competition, and want to be the gatekeeper to and toll collector for all satellite programming, even when broadcasters make their programming legitimately available for free to those with an FTA satellite receiver such as a Coolsat receiver. Freetech is informed and believes, and therefore alleges, that Plaintiffs and Counter-defendants seek, through law suits such as these, to win a stranglehold over the entire satellite television market, including FTA.

20. Coolsat devices distributed by Freetech cannot decrypt or descramble Echostar's encrypted or scrambled transmissions without being modified by the addition of software created by non-parties.

21. Plaintiffs and Counter-defendants have no evidence that Coolsat devices distributed by Freetech can decrypt or descramble Echostar's encrypted or scrambled transmissions without

1 being modified by the addition of software created by non-parties.

2 22. Freetech does not write, develop, modify, or distribute software that enables the
3 viewing of Echostar's scrambled or encrypted satellite transmissions on Coolsat receivers. Nor does
4 Freetech test or load any such software on Coolsat devices.

5 23. Plaintiffs and Counter-defendants have no evidence that Freetech writes, develops,
6 modifies, or distributes software that enables the viewing of Echostar's scrambled or encrypted
7 satellite transmissions on Coolsat receivers. Nor do Plaintiffs and Counter-defendants have evidence
8 that Freetech tests or loads any such software on Coolsat receivers.

9 24. Freetech does not provide software that enables the viewing of Echostar's scrambled
10 or encrypted satellite transmissions on Coolsat receivers to any third party, including David Smith.

11 25. Plaintiffs and Counter-defendants have no evidence that Freetech provides software
12 that enables the viewing of Echostar's scrambled or encrypted satellite transmissions on Coolsat
13 receivers to any third party, including David Smith.

14 26. Plaintiffs and Counter-defendants complain that Coolsat receivers have data ports that
15 allow users to send data to their receivers. The data ports on Coolsat receivers, however, allow users
16 to perform a number of legitimate functions.

17 27. Data ports allow users to install updates to authorized Coolsat firmware. Firmware
18 updates come out every few months and Freetech provides the latest firmware updates on the
19 support portion of its website. These updates fix bugs and add improvements to the Coolsat
20 receivers' operation. Firmware updates allow users to fix and improve their Coolsat device without
21 having to replace the device or replace hardware. Firmware updates are not unique to Coolsat
22 receivers. Many electronic devices, including routers, computers, cellphones, and PDAs, all are
23 designed to accept firmware updates. Consumers expect their electronic devices to be fixable and
24 upgradeable with firmware. Echostar Europe itself sells FTA receivers that accept firmware updates
25 and Echostar Europe provides firmware downloads from its website at www.echostareurope.com.

26 28. In addition, the USB data port on Coolsat receivers facilitates a number of multimedia
27 applications. For example, users can display digital images and the play digital audio files through
28 televisions and sound systems connected to the Coolsat receiver.

29. Freetech does not condone or promote downloading of software that enables the viewing of Echostar's scrambled or encrypted satellite transmissions on Coolsat receivers.

30. Freetech does not advertise on websites that provide or link to software that enables the viewing of Echostar's scrambled or encrypted satellite transmissions on Coolsat receivers.

31. Freetech is not in the business of intercepting scrambled or encrypted satellite transmissions.

32. Freetech has never intercepted Echostar's scrambled or encrypted satellite transmissions.

33. Plaintiffs and Counter-defendants have no evidence that Freetech has intercepted Echostar's scrambled or encrypted satellite transmissions.

34. Freetech has never assisted others in the interception of Echostar's scrambled or encrypted satellite transmissions.

35. Plaintiffs and Counter-defendants have no evidence that Freetech has assisted others in the interception of Echostar's scrambled or encrypted satellite transmissions.

36. No marketing or advertising material that Freetech uses in connection with its import and distribution of any Coolsat receiver discusses using the receivers to decrypt or descramble Echostar's encrypted or scrambled programming.

37. No user manual or other material that comes with any Coolsat receiver discusses using the receivers to decrypt or descramble Echostar's encrypted or scrambled programming.

38. On the contrary, when Coolsat users visit Freetech's website, they are told that they must agree to "not use Coolsat products in any way whatsoever to intercept any satellite television signal without proper authorization."

39. Further, in the support portion of Freetech's website, which contains the authorized Coolsat firmware updates, Freetech warns consumers that "Coolsat receivers are only for use with Coolsat authorized software. Unauthorized software cannot, by any means, be used with a Coolsat receiver. Should any receiver contain such unauthorized software, the warranty will be null and void."

40. Freetech requires its distributors to "agree not to engage in . . . practices" that include

1 “downloading of unauthorized third-party software or other methods to decrypt subscription-based
2 programming systems.”

3 41. Coolsat satellite receivers are not primarily designed or produced for the purpose of
4 circumventing a technological measure that effectively controls access to a work protected under
5 copyright law. Freetech does not design, produce, or specify the design of Coolsat satellite receivers
6 for the purpose of circumventing a technological measure that effectively controls access to a work
7 protected under copyright law.

8 42. Coolsat satellite receivers are not primarily designed or produced for the purpose of
9 circumventing protection afforded by a technological measure that effectively protects a right of a
10 copyright owner in a work or a portion thereof. Freetech does not design, produce, or specify the
11 design of Coolsat satellite receivers for the purpose of circumventing protection afforded by a
12 technological measure that effectively protects a right of a copyright owner in a work or a portion
13 thereof.

14 43. It is not the case that Coolsat satellite receivers have only limited commercially
15 significant purpose or use other than to circumvent a technological measure that effectively controls
16 access to a work protected under copyright law.

17 44. It is not the case that Coolsat satellite receivers have only limited commercially
18 significant purpose or use other than to circumvent protection afforded by a technological measure
19 that effectively protects a right of a copyright owner in a work or a portion thereof.

20 45. Freetech, or another acting in concert with Freetech with Freetech’s knowledge, does
21 not market Coolsat receivers for use in circumventing a technological measure that effectively
22 controls access to a work protected under copyright law.

23 46. Freetech, or another acting in concert with Freetech with Freetech’s knowledge, does
24 not market Coolsat receivers for use in circumventing protection afforded by a technological
25 measure that effectively protects a right of a copyright owner in a work or a portion thereof.

26 47. Freetech could not know or have reason to know that Coolsat receivers are primarily
27 of assistance in the unauthorized decryption of satellite cable programming, or direct-to-home
28 satellite services, or are intended for any other activity prohibited by 47 U.S.C. § 605(a), because

1 Coolsat receivers are not primarily of assistance in the unauthorized decryption of satellite cable
2 programming, or direct-to-home satellite services, or are intended for any other activity prohibited
3 by 47 U.S.C. § 605(a).

4 48. Plaintiffs and Counter-defendants have not paid money or given property to Freetech.
5 Plaintiffs and Counter-defendants have no evidence that they paid money or gave property to
6 Freetech. Any revenues Freetech has made from importing and distributing Coolsat receivers has
7 come from non-parties.

8 49. Freetech has no money or property which Plaintiffs and Counter-defendants once
9 owned. Moreover, Freetech has no money or property in which Plaintiffs and Counter-defendants
10 have a vested interest. Plaintiffs and Counter-defendants have no evidence that Freetech has money
11 or property which Plaintiffs and Counter-defendants once owned or in which Plaintiffs and Counter-
12 defendants have a vested interest.

13 50. Freetech brings these counterclaims for declaratory relief based upon explicit threats
14 and actual litigation by Plaintiffs and Counter-defendants against Freetech. An actual case or
15 controversy exists within the meaning of 28 U.S.C. § 2201 as to whether Freetech bears liability
16 pursuant to the claims threatened by Plaintiffs and Counter-defendants in this action. A judicial
17 determination is necessary and appropriate at this time so that the parties may ascertain their
18 respective rights and obligations, if any.

19 **FIRST CAUSE OF ACTION**

20 **Declaration Of No Violation Of the Digital Millennium Copyright Act**

21 51. Freetech incorporates and realleges paragraphs 1 through 50 of the Counterclaims
22 above.

23 52. Plaintiffs and Counter-defendants allege that Freetech has violated 17 U.S.C. §§
24 1201(a)(2), (b)(1).

25 53. Based on the circumstances described above, Freetech has not engaged in a violation
26 of 17 U.S.C. §§ 1201(a)(2), (b)(1) and is entitled to a declaration to that effect.

27 **SECOND CAUSE OF ACTION**

28 **Declaration Of No Violation Of Section 605(a) of the Communications Act**

54. Freetech incorporates and realleges paragraphs 1 through 53 of the counterclaims above.

55. Plaintiffs and Counter-defendants allege that Freetech has violated 47 U.S.C. § 605(a).

56. Based on the circumstances described above, Freetech has not engaged in a violation of 47 U.S.C. § 605(a) and is entitled to a declaration to that effect.

THIRD CAUSE OF ACTION

Declaration Of No Violation Of Section 605(e)(4) of the Communications Act

57. Freetech incorporates and realleges paragraphs 1 through 56 of the counterclaims above.

58. Plaintiffs and Counter-defendants allege that Freetech has violated 47 U.S.C. § 605(e)(4).

59. Based on the circumstances described above, Freetech has not engaged in a violation of 47 U.S.C. § 605(e)(4) and is entitled to a declaration to that effect.

FOURTH CAUSE OF ACTION

Declaration Of No Violation Of the Electronic Communications Privacy Act

60. Freetech incorporates and realleges paragraphs 1 through 59 of the counterclaims above.

61. Plaintiffs and Counter-defendants allege that Freetech has violated 18 U.S.C. § 2520(a).

62. Based on the circumstances described above, Freetech has not engaged in a violation of 18 U.S.C. § 2520(a) and is entitled to a declaration to that effect.

FIFTH CAUSE OF ACTION

Declaration Of No Violation Of California's Bus. & Profs. Code § 17200

63. Freetech incorporates and realleges paragraphs 1 through 62 of the counterclaims above.

64. Plaintiffs and Counter-defendants allege that Freetech has violated California's Bus. & Profs. Code § 17200

65. Based on the circumstances described above, Freetech has not engaged in a violation of California's Bus. & Profs. Code § 17200 and is entitled to a declaration to that effect.

FIFTH CAUSE OF ACTION

Declaration Of No Unjust Enrichment

66. Freetech incorporates and realleges paragraphs 1 through 65 of the counterclaims above.

67. Plaintiffs and Counter-defendants allege that Freetech has been unjustly enriched at the expense of Plaintiffs and Counter-defendants.

68. Based on the circumstances described above, Freetech has not been unjustly enriched at the expense of Plaintiffs and Counter-defendants and is entitled to a declaration to that effect.

PRAYER FOR RELIEF

Freetech seeks relief as follows:

- a. That the Court enter judgment in favor of Freetech and against Plaintiffs and Counter-defendants on all causes of action of their Complaint;
- b. That the Court enter judgment in favor of Freetech and against Plaintiffs and Counter-defendants on all causes of action of Freetech's Counterclaims;
- c. That the Court award Freetech costs of suit, including attorney's fees; and
- d. That the Court grant such additional relief as is just and equitable.

DEMAND FOR JURY TRIAL

Freetech hereby demands a jury trial for all issues triable by jury.

Dated: January 16, 2008

Respectfully submitted,
WINSTON & STRAWN LLP

By: /s/

Andrew P. Bridges
Jennifer A. Golinveaux
Matthew A. Scherb

LAW OFFICE OF JONATHAN BAE

By: /s/

Jonathan Bae

Attorneys for Defendant and Counterclaimant
Fretech, Inc.

CONCURRENCE IN FILING

The other signatories above concur in the filing of this pleading.

Dated: January 16, 2008

By: /s/

Matthew A. Scherb

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